

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTONIO MALLET,

Plaintiff,

- against -

ROBERT T. JOHNSON, BRONX COUNTY DISTRICT
ATTORNEY,

Defendant.

09 Civ. 8430 (JGK)

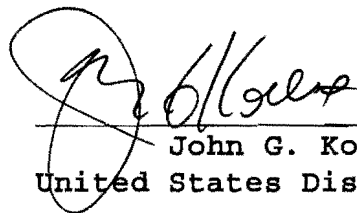
MEMORANDUM OPINION
AND ORDER

JOHN G. KOELTL, District Judge:

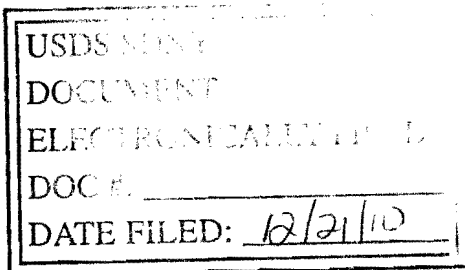
The Court has received the attached application for the appointment of counsel. The application is identical to an application that the Court has already denied. Accordingly, the application is **denied without prejudice** for the reasons stated in the Court's order of November 1, 2010.

SO ORDERED.

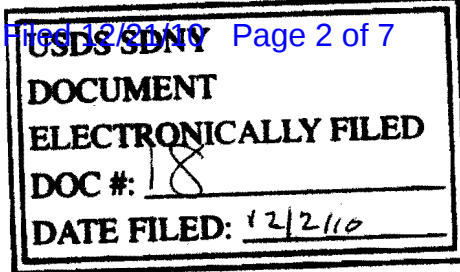
Dated: New York, New York
December 20, 2010



John G. Koeltl
United States District Judge



SCANNED



PRO SE OFFICE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
ANTONIO MALLET,

Plaintiff,

-against-

ROBERT T. JOHNSON, BRONX COUNTY
DISTRICT ATTORNEY,Defendant.
-----XAPPLICATION FOR THE
COURT TO REQUEST
COUNSEL PURSUANT TO
18 U.S.C. § 3006A(g)

09-CV-8430 (JGK)

S.D. OF N.Y.

FILED
U.S. DISTRICT COURT
2010 DEC -2 PM 3:54

1. Name of applicant is Antonio Mallet.

2. Explain why you need a lawyer in this case. I need a lawyer assigned to assist me in litigating the serious issues dealing with evidence the Plaintiff requested. My case meets the criteria for appointment of counsel under *Cooper* and *Hodge* (likely merit, independent efforts at obtaining counsel, need for factual investigation, complex legal issues, etc.) It appears that the Plaintiff meets at least two of these criteria's. He has dutifully albeit unsuccessfully sought representation by counsel. Additionally, the thrust of his § 1983 action is obtaining ballistic and fingerprint evidence and, in present counsel's experience, obtaining evidence is something that lawyers can do far more successfully than imprisoned pro se litigants. *See, also, Washington v. Smith*, 219 F.3d 620, 631 (7th Cir. 2000)(expecting incarcerated prisoner to produce witnesses wholly unreasonable). Plaintiff request oral argument on his motion to dismiss via teleconference, or by appointed counsel.

3. **I declare under the penalty of perjury that the foregoing is true and correct.**

Pursuant to 28 U. S .C. § 1746, the information herein contained is true and accurate under the penalty of perjury.

Dated: October 20, 2010
Napanoch, New York



 ANTONIO MALLET, *pro se*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANTONIO MALLET,

Plaintiff,

-against-

ROBERT T. JOHNSON, BRONX COUNTY

Defendant.
-----X

CERTIFICATE OF SERVICE

09-cv-8430 (JGK)

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
2010 DEC -2 PM 3:54

I, Antonio Mallet, plaintiff *pro-se*, declare under penalty of perjury that I have served a copy of attached Application for the Assignment of Counsel (18 USC § 3006A[g]) and all supporting papers upon the following and concerned parties:

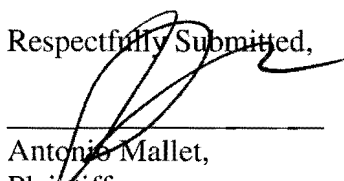
Attn: Clerk of the Court
Hon. John G. Koeltl, U.S.D.J.
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Shlomit Aroubuas, A. C. C.
Michael A. Cardozo, Esq.
Corporation Counsel for City of New York
100 Church Street, Room 3-188
New York, New York 10007
Attorney for Defendant Johnson

By placing the following in a properly sealed envelope and deposited into the mailbox located within Eastern Correctional Facility, P.O. Box 338, Napanoch, New York 12458-0338, and forwarded via United States Postal Service, and addressed to the concerned parties.

Dated: October 29, 2010

Respectfully Submitted,



Antonio Mallet,
Plaintiff *pro-se*

Pursuant to 28 U. S .C. § 1746, the information herein contained is true and accurate under the penalty of perjury.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTONIO MALLET,

Plaintiff,

- against -

ROBERT T. JOHNSON, BRONX COUNTY DISTRICT
ATTORNEY,

Defendant.

09 Civ. 8430 (JGK)

MEMORANDUM OPINION
AND ORDER

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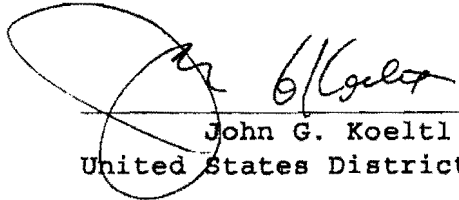
JOHN G. KOELTL, District Judge:

The Court has received the attached application for the appointment of counsel. The Court of Appeals for the Second Circuit has articulated factors that should guide the Court's discretion to appoint counsel to represent an indigent litigant under 28 U.S.C. § 1915. See Hodge v. Police Officers, 802 F.2d 58, 61-62 (2d Cir. 1986); Jackson v. Moscicki, No. 99 Civ. 2427 (JGK), 2000 WL 511642, at *4 (S.D.N.Y. Apr. 27, 2000). For the Court to order the appointment of counsel, the plaintiff must, as a threshold matter, demonstrate that his claim has substance or a likelihood of success on the merits. See Hodge, 802 F.2d at 61-62. Only then can the Court consider the other factors appropriate to determination of whether counsel should be appointed: "plaintiff's ability to obtain representation independently, and his ability to handle the case without

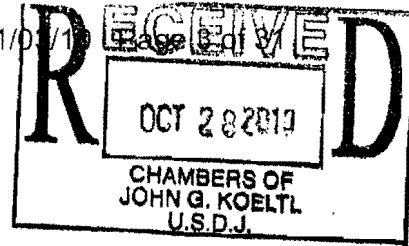
assistance in the light of the required factual investigation, the complexity of the legal issues, and the need for expertly conducted cross-examination to test veracity." Cooper v. A. Sargenti Co., Inc., 877 F.2d 170, 172 (2d Cir. 1989). The plaintiff has failed to show that his claims are likely to have merit, and the application for the appointment of counsel is therefore denied without prejudice.

SO ORDERED.

Dated: New York, New York
November 1, 2010



John G. Koeltl
United States District Judge



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANTONIO MALLET,

Plaintiff,

-against-

ROBERT T. JOHNSON, BRONX COUNTY
DISTRICT ATTORNEY,

Defendant.
-----X

**APPLICATION FOR THE
COURT TO REQUEST
COUNSEL PURSUANT TO
18 U.S.C. § 3006A(g)**

09-CV-8430 (JGK)

1. Name of applicant is Antonio Mallet.

2. Explain why you need a lawyer in this case. I need a lawyer assigned to assist me in litigating the serious issues dealing with evidence the Plaintiff requested. My case meets the criteria for appointment of counsel under *Cooper* and *Hodge* (likely merit, independent efforts at obtaining counsel, need for factual investigation, complex legal issues, etc.) It appears that the Plaintiff meets at least two of these criteria's. He has dutifully albeit unsuccessfully sought representation by counsel. Additionally, the thrust of his § 1983 action is obtaining ballistic and fingerprint evidence and, in present counsel's experience, obtaining evidence is something that lawyers can do far more successfully than imprisoned pro se litigants. *See, also, Washington v. Smith*, 219 F.3d 620, 631 (7th Cir. 2000)(expecting incarcerated prisoner to produce witnesses wholly unreasonable). Plaintiff request oral argument on his motion to dismiss via teleconference, or by appointed counsel.

3. **I declare under the penalty of perjury that the foregoing is true and correct.**

Pursuant to 28 U. S .C. § 1746, the information herein contained is true and accurate under the penalty of perjury.

Dated: October 20 2010
Napanoch, New York



ANTONIO MALLET, *pro se*



SCANNED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MEMORANDUM*Pro Se Office***To:** Honorable John G. Koeltl, USDJ**From:** V. Noriega, *Pro Se Office*, x01774**Date:** December 3, 2010**Re:** Antonio Mallet v. Robert T. Johnson, et al., 09 Civ. 8430 (JGK)

The attached document, which was received by this Office on December 2, 2010, has been submitted to the Court for filing. The document is deficient as indicated below. Instead of forwarding the document to the docketing unit, I am forwarding it to you for your consideration. See Fed. R. Civ. P. 5(d)(2)(B), (4). Please return this memorandum with the attached papers to this Office, indicating at the bottom what action should be taken.

- () No original signature.
- () No affirmation of service/proof of service.
- () The request is in the form of a letter.
- (x) Other: Plaintiff did not include an In Forma Pauperis application (IFP) with the Motion for Appointment of Counsel.

(X) **ACCEPT FOR FILING**() **RETURN TO PRO SE LITIGANT**

Comments:

*I have already decided
the application.
See attached.*

[Signature]
United States District Judge

United States Magistrate Judge

Dated:

12/13/10.